

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1156 of 1989

A n d

SPECIAL CRIMINAL APPLICATION NO. 1328 of 1989.

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JINABEN HUSENBHAI MANSURI

Versus

STATE OF GUJARAT

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Appearance:

SPECIAL CRIMINAL APPLICATION NO.: 1156 OF 1989

MR EE SAIYED for Petitioner

Mr ST Mehta, Addl. PP for Respondent No. 1

MR DH CHUDASAMA for Respondent No. 2

SPECIAL CRIMINAL APPLICATION NO. 1328 OF 1989:

MR DH CHUDASAMA for Petitioner.

MR ST Mehta Addl. PP for Respondent No. 1

MR EE SAIYED for Respondent No. 2.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/02/97

## ORAL JUDGEMENT

These petitions arise out of the judgment and order passed by the learned Judicial Magistrate , First Class, Ahmedabad Rural in Criminal Miscellaneous Application No. 44 of 1987. The facts leading to the present petitions are as under :-

2. Parties to these petitions Babubhai and Jinaben were married some time in the year 1980. Two children were born to Bai Jinaben out of the said wedlock. Bai Jinaben was driven out of her matrimonial home on 11th July, 1987 and was divorced on 12th July, 1987. It appears that she claimed maintenance from Babubhai for the children. Said claim was settled and Babubhai agreed to pay monthly maintenance of Rs. 250/- for the children.

3. Bai Jinaben filed Criminal Miscellaneous Application No. 44 of 1987 before the learned Judicial Magistrate, First Class, Ahmedabad Rural under section 3 of the Muslim Women [Protection of Rights on Divorce] Act, 1986. She claimed a sum of Rs.44/- by way of Mahr; the maintenance for the period of Iddat and return of her trousseau as detailed in her application. Said application was allowed by the learned Magistrate on 13th February, 1989. The learned Magistrate directed Babubhai to pay Rs.44/- to her by way of Mahr; a sum of Rs. 10,000/- by way of maintenance and to return four items of jewellery as detailed in the order and other utensils, clothes etc. In case of default of return of jewellery, Babubhai was directed to pay sum of Rs. 10,000/- and in default of return of other utensils, etc., a sum of Rs.1000/-.

4. Feeling aggrieved by the aforesaid order of the learned Magistrate, Babubhai preferred revision application No. 16 of 1989 before the learned Additional Sessions Judge, Ahmedabad Rural. The learned Judge, under his judgment and order dated 23rd August, 1989, partially allowed the said revision application. The learned Additional Sessions Judge confirmed the order of the learned Magistrate in respect of the return of jewellery and other items and payment of cash in case of default to return the same. However, the learned Additional Sessions Judge considered that the sum of Rs.10,000/- awarded for the maintenance was disproportionately high and reduced the same to Rs.2000/-

5. Feeling aggrieved, Babubhai has preferred above

special criminal application No. 1328 of 1989 and has claimed that the order of payment of cash in lieu of return of jewellery and other sundry items be quashed and set aside. He has further claimed that the amount of maintenance awarded for the Iddat period by the learned Additional Sessions Judge be further reduced.

Bai Jinaben, feeling aggrieved by the order of the learned Additional Sessions Judge, has preferred special criminal application No. 1156 of 1989 and has claimed that the amount of maintenance for the Iddat Period awarded to her is far too less and the order of the learned Judicial Magistrate, First Class, made in this respect be restored.

6. Both the Courts below on appreciation of evidence, has found that the items listed in the order of the learned Magistrate were given to Bai Jinaben by her parents at the time of or after her marriage. Considering the value of such items, the Courts below have directed the husband Babubhai to pay sum of Rs.10,000/- and Rs.1,000/- respectively for default in returning the items of jewellery and other sundry items. I do not find any infirmity in arriving at the said figure and the same does not call for any interference. The claim of Babubhai for quashing of the order made by the Courts below in respect of jewellery and other sundry items or payment of cash in lieu of such jewellery and other sundry items is, therefore, rejected.

7. The learned Magistrate has taken the view that Babubhai was liable to provide for the future maintenance to Bai Jinaben during the period of Iddat and considering her future needs, directed Babubhai to pay lumpsum amount of Rs.10000/- towards the maintenance of Bai Jinaben. The learned Additional Sessions Judge has proceeded on the basis that Babubhai was liable to provide for the maintenance of Bai Jinabai only during the period of Iddat i.e. for three months and ten days [ as calculated by the learned Magistrate ]. He, considering the monthly income of Babubhai, held that Rs.10000/- awarded to Bai Jinaben was too excessive and required to be reduced to Rs. 2000/-. This Court has in the matter of Arab Ahemadhia Abdulla v. Arab Bail Mohmuna Saiyadbhai and others, [AIR 1988 Gujarat 141] held that a muslim woman is entitled to maintenance after her divorce from her former husband till she remarries. Thus, in my view, learned Additional Sessions Judge has erred in holding that Bai Jinaben was entitled to maintenance for period of Iddat only i.e. for three months and has erred in reducing the maintenance awarded to her. Considering the fact that

Babubhai is the vegetable vendor and that he owns agricultural lands, amount of Rs.10000/- awarded to Bai Jinaben for her future maintenance after her divorce cannot be said to be excessive. I do not express any opinion whether the aforesaid amount of Rs.10000/- awarded to Bai Jinaben for her future maintenance is adequate or not.

8. In view of the above discussion, the order of the learned Additional Sessions Judge made on Criminal Revision Application No. 16 of 1989 in respect of lumpsum maintenance awarded to Bai Jinaben is quashed and set aside and the order of the learned Judicial Magistrate, First Class made on Criminal Miscellaneous Application No. 44 of 1987 is restored. Special Civil Application No. 1328 of 1989 preferred by Babubhai is dismissed. Rule is discharged.

9. Special Criminal Application No. 1156 of 1989 preferred by Jinaben is allowed. Rule is made absolute. Respondent No.2 Babubhai Mansoori is directed to pay the amount of maintenance as directed by the learned Judicial Magistrate, First Class ( if not paid ) and to return the jewellery and other sundry items to the petitioner - Bai Jinaben within the period of three months from to day. Writ to be sent forthwith.

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\*Vyas